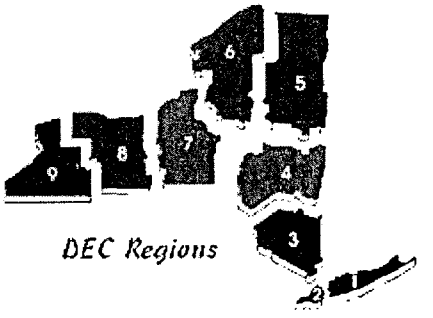
New York State Department of
Environmental Conservation

Environmental Notice Bulletin July 16, 2003



Statewide and Multiregion

SEQR and Other Notices

DEC Hearings

Completed DEC Applications

No Statewide and Multiregion Completed Apps

Region 1 **Counties:** Nassau, Suffolk

SEQR and Other Notices

SPDES Renewals

Completed DEC Applications

Nassau County

Facility	Comment Date	Location	Permits
Silver Lake Park	Aug 1 2003	Hempstead	Freshwater Wetlands Water Quality Certification Excavation & Fill in Navigable Waters
Exxonmobil Inwood Terminal	Aug 22 2003	Hempstead	Air Title V Facility
Exxonmobil Glenwood Landing Terminal	Aug 22 2003	Oyster Bay	Air Title V Facility

Suffolk County

Facility	Comment Date	Location	Permits

ENB - STATEWIDE NOTICES

Public Hearing

Notice is hereby given that the New York State Department of Environmental Conservation (Department), will hold legislative public hearings on the following proposed rules and revisions to the State Implementation Plan (SIP) for 6 NYCRR Subpart 201-3 and Subpart 227-2.

The changes proposed for 6 NYCRR Subpart 201-3 and Subpart 227-2 would reduce the emission limits for several types of stationary internal combustion engines. This proposed rule making marks a sustained series of actions undertaken by New York State (NYS), in concert with EPA and other states, to control emissions of oxides of nitrogen (NOx) and volatile organic compounds (VOCs), so that NYS may attain the National Ambient Air Quality Standard (NAAQS) for ozone. The NOx SIP will be revised to include the changes to 6 NYCRR Subpart 201-3 and Subpart 227-2.

The hearings will be held at the following locations and times:

Date: Tuesday, August 19, 2003
Time: 1 p.m.
Location: NYSDEC Annex, Region 2
11-15 47th Avenue
Hearing Room 106
Long Island City, NY 11101

Date: Thursday, August 21, 2003
Time: 1 p.m.
Location: Mahoney State Office Building
65 Court Street
Hearing Room Part 1
Buffalo, NY 14203

Date: Friday, August 22, 2003
Time: 1 p.m.
Location: NYSDEC
625 Broadway
Public Assembly Rooms 129A&B
Albany, NY 12233

The public hearings are scheduled in places that are reasonably accessible to persons with impaired mobility. At the hearings, the Department will provide interpreter services for deaf persons at no charge. Written requests for such services

are required and should be submitted by Friday, August 8, 2003, to Christine Barnes, NYSDEC, 625 Broadway, Albany NY 12233-3250; (518) 402-8451; cabarnes@gw.dec.state.ny.us.

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed action will not have a significant effect on the environment.

The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At the hearings, persons who wish to make a statement will be invited to speak. There will be one hearing record for the entire proceeding which will include any comments received on any of the proposed actions addressed in this Notice. Persons wishing to speak on a particular topic will be invited to speak in the order deemed most appropriate by the ALJ, not necessarily in the order of the rules/SIP revision listed above. The Department may take different actions on each of the items listed above based upon comments. It is requested that oral statements also be submitted in writing. The Department will give equal weight to written and oral statements. Since a cumulative record will be compiled, it is not necessary for interested parties to attend the hearings on all days.

Information concerning Subpart Part 201-3 and Subpart 227-2 may be obtained from Michael Jennings, NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, telephone: (518) 402-8403; email, mxjennin@gw.dec.state.ny.us. Written statements may be submitted until 5:00 p.m., August 29, 2003.

Information concerning the revision to the SIP may be obtained from Robert Bielawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, telephone (518) 402-8396; email srbotsford@gw.dec.state.ny.us. Written statements may be submitted to the Department until 5:00 p.m., August 29, 2003.

The proposed regulations, SIP revisions, and supporting information may be obtained from any of the following Department offices:

REGION 1, Building #40, State University of New York, Stony Brook NY 11790, Attention: Ajay Shah

REGION 2, Hunters Point Plaza, 47-40 21st Street, Long Island City NY 11101, Attention: Sam Lieblich

REGION 3, 21 South Putt Corners Road, New Paltz NY 12561, Attention: Robert Stanton

REGION 4, 1150 North Westcott Rd., Schenectady NY 12306, Attention: Rick Leone

REGION 5, Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coutant

REGION 6, Watertown State Office Bldg, 317 Washington St., Watertown NY 13601, Attn: T. Morgan

REGION 7, 615 Erie Boulevard West, Syracuse NY 13204-2400, Attention: Reginald Parker

REGION 8, 6274 East Avon-Lima Road, Avon NY 14414, Attention: Thomas Marriott

REGION 9, 270 Michigan Avenue, Buffalo NY 14202, Attention: Larry Sitzman

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Public Notice

New York State
Department of Environmental Conservation
ENVIRONMENTAL BOARD MEETING

The State Department of Environmental Conservation hereby gives notice that a meeting of the Environmental Board will be held at 2:00 p.m., July 22, 2003 in Room 129A of the Department's main offices at 625 Broadway, Albany, New York.

The Environmental Board will consider the following rulemaking action of the Department of Environmental Conservation:

- 6 NYCRR Part 325: Commercial Lawn Care Pesticide Application

This meeting is open to the public.

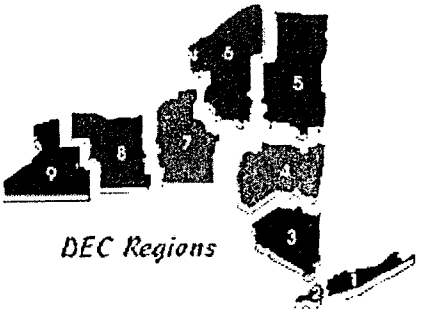
Notice Of Emergency Adoption

Pursuant to the Environmental Conservation Law, Sections 3-0301, 11-0325 and 11-1905, the Department of Environmental Conservation hereby gives notice of the following:

Adoption of emergency regulations 6NYCRR Part 189 relating to Chronic Wasting Disease. This is a readoption of the existing emergency rule. The adoption notice will be published in issue 29 of the State Register, dated 07/23/2003.

For further information contact:
Patrick Martin, Bureau of Fish and Wildlife Services
Division of Fish, Wildlife and Marine Resources
625 Broadway, Albany, NY 12233-4751

Environmental Notice Bulletin
August 27, 2003



ENB - STATEWIDE NOTICES

Completed Applications
Consolidated SPDES Renewals

PUBLIC NOTICE

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Pursuant to Section 19-0301(1)(a) of the Environmental Conservation Law, the Department of Environmental Conservation hereby gives notice of an EXTENSION OF COMMENT PERIOD FROM AUGUST 29, 2003 TO SEPTEMBER 12, 2003 AT 5:00 P.M. for amendments to the following proposed rulemaking:

6 NYCRR Part 227, Stationary Combustion Installations,
Subpart 227-2, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx); and
Part 201, Permits and Registrations,
Subpart 201-3, Exemptions and Trivial Activities

The changes proposed for 6 NYCRR Subpart 201-3 and Subpart 227-2 would reduce the emission limits for several types of stationary internal combustion engines. This proposed rule making marks a sustained series of actions undertaken by New York State (NYS), in concert with EPA and other states, to control emissions of oxides of nitrogen (NOx) and volatile organic compounds (VOCs), so that NYS may attain the National Ambient Air Quality Standard (NAAQS) for ozone. The NOx SIP will be revised to include the changes to 6 NYCRR Subpart 201-3 and Subpart 227-2.

Information concerning Subpart 201-3 and Subpart 227-2 may be obtained from Michael Jennings, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, telephone: (518) 402-8403; email, mxjennin@gw.dec.state.ny.us.

The Department invites all persons, organizations, corporations, and government agencies affected by the proposed rulemaking to submit written statements for the record. A cumulative record will be compiled of all statements. Written statements may be submitted until 5:00 p.m., September 12, 2003.

New York State Department of Environmental Conservation
625 Broadway, Albany, New York 12233-1550
Office of Hearings and Mediation Services
Phone: (518) 402-9003 • **FAX:** (518) 402-9037
Website: www.dec.state.ny.us

Erin M. Crotty
Commissioner

M E M O R A N D U M

TO: Chris Barnes

FROM: Helene G. Goldberger

SUBJECT: Part 227 Legislative Hearing Report

DATE: August 22, 2003

. . . . . .

Attached is the hearing report for the above-referenced matter. Because no one provided any comments at these proceedings I am not waiting for the transcripts to send the report to you. As soon as I get them I will send them to you. As you already know, there is no transcript for the New York City hearing as no members of the public in attendance wished to make statements and the court reporter arrived 15 minutes late.

Attachments

cc: Michael Jennings, Division of Air ✓

AUG 2 5 2003

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

625 Broadway
Albany, New York 12233-1550

In the Matter

- of the -

PROPOSED AMENDMENTS TO TITLE 6 OF THE NEW YORK COMPILATION OF CODES, RULES AND REGULATIONS PART 227 - STATIONARY COMBUSTION INSTALLATIONS, SUBPART 227-2, REASONABLY AVAILABLE CON TROL TECHNOLOGY FOR OXIDES OF NITROGEN; and PART 201, PERMITS AND REGISTRATIONS, SUBPART 201-3 - EXEMPTIONS AND TRIVIAL ACTIVITIES

HEARING REPORT

-by-

Helene G. Goldberger
Administrative Law Judge

August 22, 2003

Proceedings

Background

The New York State Department of Environmental Conservation (DEC or Department) is proposing to amend Part 227 of Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR), Stationary Combustion Installations, Subpart 227-2, reasonably available control technology (RACT) for oxides of nitrogen (NO_x); and Part 201, Permits and Registrations, Subpart 201-3, Exemptions and Trivial Activities. These proposed amendments are the most recent efforts undertaken by New York State, in concert with the United States Environmental Protection Agency (EPA) and the Ozone Transport Commission (OTC) states to control emissions of NOx - a precursor to the formation of ground-level ozone. These amendments address shortfalls in emission reductions of NO_x which will enable New York State to meet the national ambient air quality standard for ozone by 2007.

The proposed Subpart 227-2 amendments include requirements from OTC's model rule for stationary internal combustion engines, an expansion of the exempt stationary internal combustion engines category, and a choice of monitoring methods for sources that use continuous emissions monitoring (CEM). The most significant revisions to the regulations address the emission rate limitations for stationary internal combustion engines. The effective dates of the proposed requirements in Subpart 227-2 are July 1, 2004 for the submission of compliance plans and April 1, 2005 for final compliance.

The proposed changes to 6 NYCRR Subpart 201-3 reflect the exempt source language revisions proposed in Subpart 227-2.

Hearing Notice

Notice of these hearings was published in the July 16, 2003 editions of the *New York Post*, *Newsday*, *Albany Times Union*, and *Buffalo News* as well as the on-line edition of the *Environmental Notice Bulletin* for that same date.

Hearings

Hearings took place as follows:

August 19, 2003 1:00 p.m.	NYSDEC Annex, Region 2 11-15 47th Avenue Long Island City, NY 11101

August 21, 2003 1:00 p.m.	Mahoney State Office Building 65 Court Street Buffalo, NY 14203
August 22, 2003 1:00 p.m.	NYSDEC Central Office 625 Broadway Albany, NY 12233

DEC Administrative Law Judge Helene G. Goldberger presided over the three hearings.

At the New York City location, four people attended in addition to DEC Air Division staff member Michael Jennings. After Mr. Jennings provided a description of the proposed amendments, those in attendance inquired as to whether questions could be asked. Because no one wished to make a statement, ALJ Goldberger turned the meeting over to Mr. Jennings who answered the questions of the representatives of Con Edison and the Village of Rockville Centre. At approximately, 1:30 p.m., the hearing was adjourned.

In Buffalo and Albany, no members of the public appeared to provide statements and the ALJ adjourned the hearing sessions at 1:30.

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of

Proposed Amendments to Parts 227 and 201 of Title 6 of the New York State Compliance of Codes, Rules, and Regulations

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Public Legislative Hearing

DATE: August 21, 2003
LOCATION: 65 Court Street
Buffalo, New York

BEFORE: Helene G. Goldberger
Administrative Law Judge
Office of Hearings and
Mediation Services
625 Broadway, 1st Floor
Albany, New York 12233-1550
Telephone: (518) 402-9003
Facsimile: (518) 402-9014
E-Mail: hggoldbe@gw.dec.state.ny.us

FOR THE DEPARTMENT:

MICHAEL JENNINGS
Environmental Engineer
NYSDEC, Air Resources
625 Broadway, 2nd Floor
Albany, New York 12233-3254
Telephone: (518) 402-8403
Facsimile: (518) 402-9035
E-Mail: mxjennin@gw.dec.state.ny.us

(The hearing commenced at 1:30 p.m.)

MR. JENNINGS: Thank you, your Honor.

Good afternoon. My name is Michael Jennings. I am Environmental Engineer for the New York State Department of Environmental Conservation in the Division of Air Resources.

The Department is proposing to amend 6 NYCRR Part 227, Stationary Combustion Installations, Subpart 227-2, Reasonably Available Control Technology, RACT, for Oxides of Nitrogen, NOx; and Part 201, Permits and Registrations, Subpart 201-3, Exemptions and Trivial Activities. The proposed amendments to Subparts 201-3 and 227-2 mark the latest actions undertaken by New York State, in concert with EPA and the Ozone Transport Commission states, to control emissions of NOx which is a precursor to the formation of ground-level ozone. Also, the current versions of Subparts 201-3 and 227-2 that are in New York State's Implementation Plan would be superseded by the proposed amendments if adopted by New York State and approved by EPA.

Changes being incorporated into Subpart 227-2 address shortfalls in emissions

reductions of NOx, and air pollutant, which is a key ingredient in the formation of ground-level ozone during the summer months. NYSDEC worked with OTC states and EPA, and conducted industry outreach, in order to propose amendments that are achievable by industry while providing the required amount of NOx emission reductions identified by the EPA. The proposed Subpart 227-2 amendments include requirements from OTC's Model rule for stationary internal combustion engines, and expansion of the exempt stationary combustion engines category, and a choice of monitoring methods for sources which use CEMs. The most significant changes were made to the emission rate limitations for stationary internal combustion engines. The effective dates of the proposed requirements included in Subpart 227-2 are July 1, 2004 for the submission of compliance and April 1, 2005 for final compliance.

The proposed changes to 6 NYCRR Subpart 201-3 reflect the exempt source language changes proposed in Subpart 227-2.

Adopting the proposed changes to 6 NYCRR Subpart 227-2 will enable New York State to meet the National Ambient Air Quality Standard for ozone by the year 2007.

Responses to comments made at these hearings will be made in the form of a Assessment of Public Comment. If you wish to receive a copy of the Assessment of Public Comment, or a copy of the proposed rule-making, write your name, address, and e-mail address, and I will see that you receive a copy. Thank you.

A.L.J. GOLDBERGER: Good afternoon. My name is Helene Goldberger, and I am an Administrative Law Judge in the Department of Environmental Conservation's Office of Hearings and Mediations Services.

I am here today to preside over this public hearing on the Department's proposed revisions to Parts 227 and Part 201 of Title Six of the New York Compilation of Codes, Rules and Regulations.

This proposal is another effort by the Department, in concert with the US Environmental Protection Agency, to reduce emissions of ozone precursors, nitrogen oxides and volatile organic compounds. These changes target emissions from stationery combustion installations, and will become effective on April 1st of 2005.

The Department published notice of

these hearings, to be held in Buffalo today, last Tuesday in New York City, and Friday in Albany. Notice of these hearings was published online in the July 16th edition of the Environmental Notice Bulletin, and also in the -- in the same date edition of the New_York_Post, Newsday, the Albany_Times_Union and the Buffalo_News. This hearing was noticed for one p.m. today, at 65 Court Street, here in Buffalo. It is now almost one-thirty p.m., and no one has come to provide any statements.

Therefore, we are going to conclude this proceeding at this time. We did take into the record the statement of the Department's representative, Michael Jennings.

Thank you.

(The hearing concluded at 1:31 p.m.)

I hereby certify the foregoing, consisting of 6 pages, inclusive, to be a true and accurate transcription from the tapes provided to me, to the best of my skill and ability.

Witness my hand, this the 10th day of September, 2003.

Rebecca L. Mersand
Transcriptionist

rhph/tsam/prlm/pwss

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of
of the
PROPOSED AMENDMENTS TO TITLE 6 OF THE NEW YORK COMPILATION OF CODES, RULES AND REGULATIONS PART 227 - STATIONARY COMBUSTION INSTALLATIONS SUBPART 227-2, REASONABLY AVAILABLE CONTROL TECHNOLOGY FOR OXIDES OF NITROGEN; and PART 201, PERMITS AND REGISTRATIONS, SUBPART 201-3 - EXEMPTIONS AND TRIVIAL ACTIVITIES.

DATE: August 22, 2003
TIME: 1:00 p.m. to 1:30 p.m.
LOCATION: New York State Department of Environmental Conservation
625 Broadway.
Albany, New York 12233

BEFORE: A.L.J. Helene G. Goldberger
New York State DEC
Office of Hearings and Mediation Services
625 Broadway, 1st Floor
Albany, New York 12233-1550
Telephone: (518) 402-9003
Facsimile: (518) 402-9014
E-Mail: hggoldbe@gw.dec.state.ny.us

APPEARANCE:

FOR THE NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

MICHAEL JENNINGS
Environmental Engineer 1
Bureau of Stationary Sources
Division of Air Resources
625 Broadway, 2nd Floor
Albany, New York 12233-3254
Telephone: (518) 402-8403
Facsimile: (518) 402-9035
E-Mail: mxjennin@gw.dec.state.ny.us

(The hearing commenced at 1:00 p.m.)

THE HEARING OFFICER: My name is Helene Goldberger, and I am an Administrative Law Judge in the Department of Environmental Conservation, Office of Hearings and Mediation Services. I am here today to take comments on the Department's proposed revisions to parts 201 and 227 of Title 6 of the New York compilation of Codes, Rules and Regulations.

This proposal is another effort by the Department in concert with the Environmental Protection Agency to reduce emissions of ozone precursors, nitrogen oxides and volatile organic compounds. These changes target emissions from stationary combustion installations and will become effective on April 1st of 2005.

The Department published notice of these hearings to be held today in Albany, and this past week in Buffalo and New York City. Notice of the hearings was published online in the July 16th edition of the Environmental Notice Bulletin, and also in the same date editions of the New York Post, NewsDay, Albany Times Union, and the Buffalo News.

Written comments will be accepted by the Department through August 29th of this year. If you have not done so already and wish to provide a statement today, please fill out a card. We will start with the Department's representative, Michael Jennings, who will provide an explanation of the proposed rules.

MR. JENNINGS: (Reading) "Thank you, your Honor. Good afternoon. My name is Mike Jennings. I'm an Environmental Engineer for the State of New York Department of Environmental Conservation, Division of Air Resources.

"The Department is proposing to amend Part 227, Stationary Combustion Installations, specifically Subpart 227-2 NOX, RACT. And also part 201, Permits and Registrations,. specifically 201-3, Exemptions and Trivial Activities. The proposed amendments to Subparts 201-3 and 227-2 mark the latest actions undertaken by New York State in concert with E.P.A. and the Ozone Transport Commission states, to control emissions of NOX, which is a precursor to the formation of ground-level ozone. Also, the current versions of Subparts 201-3 and 227-2 that are in New York State's Implementation

Plan would be superseded by the proposed amendments if adopted by the New York State and U.S. E.P.A..

"Changes being incorporated into Subpart 227-2 address the shortfalls in emission reductions of NOX, an air pollutant which is a key ingredient in the formation of ground-level ozone during the summer months. New York State D.E.C. has worked with O.T.C. states and E.P.A., and conducted industry outreach in order to propose amendments that are achievable by industry, while providing the required amount of NOX emission reductions identified by E.P.A. The proposed Subpart 227-2 amendments include requirements from the O.T.C.'s model rule for stationary internal combustion engines, an expansion of the exempt stationary internal combustion engine category, and a choice of monitoring methods for sources which use C.E.M.'s. The most significant changes were made to the emission rate limitations for stationary internal combustion engines. The effective dates for the proposed requirements included in Subpart 227-2 are July 1st, 2004 for the submission of compliance plans and applications, and April 1st, 2005 for the final compliance.

"Proposed changes to 220 -- to

Subpart 201-3 reflect the exempt source language changes also proposed in 227-2.

"Adopting the proposed changes to Subpart 227-2 will enable New York State to meet the National Ambient Air Quality Standard for ozone by the year 2007.

"Responses to comments made at these hearings will be made in the form of Assessment to -- of Public Comment. If you wish to receive a copy of the Assessment of Public Comment, or a copy of the proposed rule making, write your name, address, and e-mail address, and I will see that you receive a copy. Thank you."

THE HEARING OFFICER: Thank you. Did you want to make a statement?

I -- I guess there's no one else here who wants to make a statement.

Can we go off the record?

(Off-the-record-discussion)

THE HEARING OFFICER: It's now one-thirty. We're going to adjourn the hearing seeing no -- no people who would like to make any statements. Thank you for coming.

(The hearing concluded at 1:30

p.m.)

I, Ray Schmidt, do hereby certify that the foregoing was taken by me, in the cause, at the time and place, that the foregoing typewritten transcription, consisting of pages number 1 to 7, inclusive, is a true record prepared by me and completed by Associated Reporters Int'l., Inc. from materials provided by me.

Ray Schmidt, Reporter

Sept 2, 2003 Date

rrs/tcds/pkwb

ASSESSMENT OF PUBLIC COMMENT ON PROPOSED REVISIONS TO
6 NYCRR SUBPART 227-2, REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) FOR OXIDES OF NITROGEN (NOx), AND SUBPART 201-3, EXEMPTIONS AND TRIVIAL ACTIVITIES

1. Comment:

North Shore Towers is a cooperative apartment complex on the Nassau-Queens border. The complex was built almost 30 years ago with its own integral power plant and has no tie into the utility electrical grid. The population is about 5000 at this 1844 unit - three building complex. Many residents here are concerned about the future of the power plant, and the renovation costs they will ultimately be forced to bear as a result of this new regulatory limit. Many of them voiced this concern at a recent open Board Meeting on August 20, 2003.

Over the years as federal and state regulations have changed, we have been able to comply. We have a Title V Permit as required. Our dual-fuel generators are run on gas fuel as much as possible. When on oil, the average meets the current NOx emission limit of 9.0 grams per brake horsepower hour. On dual fuel (gas and oil pilot combined), they average about 5.5 grams per brake horsepower hour.

The new NOx emission limit now under consideration is 75% lower at 2.3 grams per brake horsepower hour. Compliance with Reasonably Available Control Technology (RACT) will probably require SCR equipment or new generators. This is a prohibitive cost that the Board of Directors at this Cooperative and the residents that they represent had not expected. Back Pressure caused by the SCR could be detrimental to our equipment and reliability may be diminished. Our initial cost estimates seem significantly higher than assumed. We believe that existing equipment should be allowed to run as designed for its life, and then be replaced with new equipment that will meet new codes. (1)

owner or operator must submit, as part of the compliance plan..."

This would clarify that WTE facilities, which are already subject to MACT for NOx, are not required to submit a RACT compliance plan.

It does not appear to be the intention of the Proposal to require additional NOx control on combustion boilers that have recently been permitted by the Department. The new Section 227-2.3(d) specifically exempts sources (other than stationary internal combustion engines) that have previously submitted compliance and operating plans from doing so again. Ref-Fuel requests that an additional clarification be made for units that have been issued a recent Air Title V permit that includes a compliance determination with Part 227-2.4. (2)

Response:

6 NYCRR 200.1(l) defines the term combustion installation and 6 NYCRR 200.1(ai) defines the term incinerator. Subpart 227-2 specifically regulates combustion installations and not incinerators. Incinerators are not subject to the provisions of the Subpart 227- 2. The proposed regulations adequately define which sources are subject to this rule. Therefore, no new applicability language will be added.

3. Comment:

In Ref-Fuel's case, the Niagara Falls facility includes a large alternative fuel-fired boiler that is permitted to combust processed wood. The facility received its Title V permit in 2000 (Permit No. 9-2911-00113/00039). Condition 118 of that permit is a Compliance Certification for 6 NYCRR 227-2.4, which establishes a NOx emission limit for the boiler and a requirement for a NOx continuous emissions monitoring system (CEM). The

required by this regulation.

2. Comment:

Emissions from New York's Waste-To-Energy (WTE) facilities are currently regulated under NYCRR Part 219, which requires Best Available Control Technology (BACT) for NOx under 219-2.2. In addition, implementation of the new federal Maximum Achievable Control Technology (MACT) standards at 40 CFR 60 Subparts Cb and Eb have been delegated to New York and incorporated into State regulation at NYCRR 200.10. The MACT standards, which went into effect in 2000, include emission limits for NOx.

The Proposal acknowledges this status at 227-2.4(g), where it essentially states that sources regulated under a variety of other standards (including Part 219) are not required to submit a case-by-case RACT determination. However, Sections 227-2.4(a), (b) and (c) appear to contradict this exemption. For example, Section 227-2.4(a)(2) states that:

"..For very large boilers having configurations other than those listed above or which are fired primarily with fuels not listed above, the owner or operator must submit, as part of the compliance plan required under subdivisions 227-2.3(a) and (b), a proposal for RACT ..."

The language of subdivisions 227-2.4(a)(2), (b)(2) and (c)(1)(iii) are all similarly written. Ref-Fuel suggests a change similar to the following, using the cited text above:

"...For very large boiler having configurations other than those listed above or which are fired primarily with fuel not listed above, and which are not otherwise regulated under 6 NYCRR Parts 212, 214, 216, 219, 220, or 224, the

owner or operator must submit, as part of the compliance plan..."

This would clarify that WTE facilities, which are already subject to MACT for NOx, are not required to submit a RACT compliance plan.

It does not appear to be the intention of the Proposal to require additional NOx control on combustion boilers that have recently been permitted by the Department. The new Section 227-2.3(d) specifically exempts sources (other than stationary internal combustion engines) that have previously submitted compliance and operating plans from doing so again. Ref-Fuel requests that an additional clarification be made for units that have been issued a recent Air Title V permit that includes a compliance determination with Part 227-2.4. (2)

Response:

6 NYCRR 200.1(l) defines the term combustion installation and 6 NYCRR 200.1(ai) defines the term incinerator. Subpart 227-2 specifically regulates combustion installations and not incinerators. Incinerators are not subject to the provisions of the Subpart 227- 2. The proposed regulations adequately define which sources are subject to this rule. Therefore, no new applicability language will be added.

3. Comment:

In Ref-Fuel's case, the Niagara Falls facility includes a large alternative fuel-fired boiler that is permitted to combust processed wood. The facility received its Title V permit in 2000 (Permit No. 9-2911-00113/00039). Condition 118 of that permit is a Compliance Certification for 6 NYCRR 227-2.4, which establishes a NOx emission limit for the boiler and a requirement for a NOx continuous emissions monitoring system (CEM). The

unit's NOx limit was a boiler-specific determination made with the Department, and the Department verified its consistency with Part 227-2 by incorporating it into the Title V permit. However, a formal compliance plan and operating plan in accordance with 227-2.3 was not submitted. Ref-Fuel believes that it would be appropriate to clarify the status of this unit and others like it in the Proposal.

The change could be made with a modification similar to the following in Section 227-2.3(d):

"Except for any source that is subject to the control requirements of subdivision 227-2.4(f) that take effect on April 1, 2005, any owner or operator of a source subject to this Subpart that previously submitted compliance and operating plans in compliance with an earlier version of this Subpart, or which have received a Title V Air Permit that incorporates the requirements of Subpart 227-2, is exempt from the requirements of this section."

The change would clarify that recent NOx limits that have been derived for specific, non-fossil fuel boilers are not affected by the Proposal. Since Title V permits have been issued only during the past five years or so, this would seem to be a reasonable time period. (2)

Response:

Only facilities that have sources subject to the proposed revised presumptive RACT emission limits or that had a previous case-by-case RACT determination under section 227-2.5(c) will be required to submit a compliance plan on July 1, 2004 under proposed revised section 227-2.3. This facility is not subject to new emission limits nor did it have a previous case-by-case RACT determination. This facility, however, did not submit a compliance plan or an operating plan as required under existing section 227-2.3. Since the Department's operating permit program does not supercede any of the Department's regulations, compliance and operating plans should have been submitted

to the Department for approval.

4. Comment:

Dominion Transmission Incorporated's (DTI's) first concern arises from the Department's stated objective for proposing the change to 6 NYCRR Subpart 227-2. At a meeting hosted by the Department in January 2003, the stated objective of the proposed change was to enable the New York City (NYC) metropolitan area to achieve attainment for ozone. The change as proposed is a "one-size-fits-all" solution. It does not take into account the geographic location or the actual emissions of the regulated sources. For example, the three DTI compressor stations likely to be affected by this change are located in Tompkins, Herkimer and Steuben counties and are far from the NYC metropolitan area. While these stations are major sources in terms of potential emissions, two of these stations, located in Tompkins and Herkimer counties, NY, are peaking facilities that operate less than 10% of available annual hours and do not operate during summer months. Based on the most recent four years' operating history, total annual NOx emissions for these two stations combined for the entire ozone season has been less than three (3) tons. The third station, a storage facility located in Steuben County, NY, operates approximately 20% of its available hours. This station was retrofitted with controls in 1995 for the first round of RACT. As proposed, the rule may require expenditures of over one million dollars at one station and several million dollars per station at DTI's two remaining stations to install and operate emission control equipment. The result will be very little reduction in actual NOx emissions during the ozone season or any other time of the year. DTI expects the costs of controls on its engines located in New York to exceed the Department's stated cost-effectiveness threshold of $6000 per ton based on actual emissions. (3)

Response:

The commenter is correct that the stated objective for adopting this regulation at the January 2003 meeting

was to meet emission reduction requirements for attaining the national ambient air quality standard (NAAQS) for ozone in the New York City metropolitan area. It should be noted that the State of New York is part of the ozone transport region as defined in section 184(a) of the federal Clean Air Act. As part of an ozone transport region, New York State is required to implement NOx RACT statewide (federal Clean Air Act sections 184(b)(1)(B) and 182(f)). Since the Department has identified the measures to be implemented by the revisions as RACT, they are required by federal law to be implemented statewide.

Additionally, as referred to in the Regulatory Impact Statement (RIS), the Department has identified areas in the state that will be nonattainment for the revised ozone NAAQS (often referred to as the eight-hour ozone NAAQS or the 8-hour ozone standard). Since the proposal of this regulation, more areas around New York State were found to have 8 hour ozone levels above the NAAQS. As stated in the RIS, "(p)romulgation of these revisions to Subpart 227-2, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx,) is intended to reduce NOx emissions from stationary combustion installations in order to address these emission shortfalls and to make progress towards reducing eight-hour ozone levels." Therefore, the implementation of this regulation statewide will have benefits statewide and will address an identified air quality problem.

5. Comment:

Dominion is concerned that the Department is allowing insufficient time to plan, budget, design, permit and install controls on regulated sources. For many companies, including Dominion, budgets for 2004 have already been submitted. The rule as proposed will require companies to apply for permits in July 2004. Sources are then expected to achieve compliance in April 2005. This schedule does not allow for permit approval, design, purchase and installation of equipment. The schedule also does not consider the availability of equipment. The engines targeted by the proposed change must continue to provide service to customers and cannot all be taken out of service

simultaneously or during periods of peak demand. (3)

Response:

The Department's demonstration of ozone attainment requires three years of complying ambient air monitoring data. To meet its obligation to attain the one-hour ozone NAAQS, these provisions need to be in place by 2005 to provide for three years of ozone monitoring data necessary to meet the 2007 attainment deadline. Therefore, these provisions need to implemented by summer of 2005 to meet the Department's obligation to attain the one-hour ozone NAAQS in the New York City metropolitan area.

In addition, the Department began its outreach to stakeholders in 2001 with the Ozone Transport Commission (OTC) Stationary/Area Source Committee and the OTC workgroup established to develop model rules to assist states as they went through their individual rule making processes. The Department conducted its own stakeholder meeting in January 2003. This regulation was proposed by the Department on July 16, 2003. Affected parties, therefore, had ample knowledge of the Department's intent regarding this regulation. The Department believes that ample lead time has been given to all sources to implement the required controls.

6. Comment:

The Department has not adopted flexibility provisions that can be found in the Ozone Transport Commission's model rule for NOx controls for internal combustion engines. The Department should allow companies to purchase emission allowances as an alternative to installing costly controls on sources. Such flexible provisions are particularly important to consider for sources, such as natural gas compressor stations, that are required by FERC to be available for full, no-notice service to transport natural gas, but which historically operate with very low utilization factors. Such sources do not contribute significantly to the formation of ozone in New

York. As a consequence, installation of costly controls will not reduce the formation of ozone in New York, the New York City metropolitan area or the Ozone Transport Region. (3)

Response:

There are several compliance options in both the current version and in the proposed revisions of Subpart 227-2, including system-wide averaging. The Department has not chosen the use of emission allowances as an option for complying with RACT.

The NOx budget programs (6 NYCRR Part 204, NOx Budget Trading Program, and 6 NYCRR Part 237, Acid Deposition Reduction NOx Budget Trading Program) from which these allowances are generated generally cover a subset of the sources covered under Subpart 227-2. Since every source subject to the NOx budget programs is already required to comply with NOx RACT, the NOx budget programs represent "beyond RACT" requirements for each source.

It would not be equitable for the Department to allow some sources to meet their NOx RACT obligations through the use of allowances created for sources that are already required to comply with RACT and are further controlled through the allowance trading program.

Also, the Part 204 program only concerns emissions during the ozone season (May1 - September 30) and is part of the State Implementation Plan (SIP) for attainment of the ozone NAAQS. While Subpart 227-2 is also part of the same SIP, it must, pursuant to the federal Clean Air Act, be implemented on a year-round basis. Sections 172(c)(1), 182(b)(2), 182(f) and 184(b)(1)(B) of the federal Clean Air Act taken together require NOx RACT to be implemented statewide in New York State. See also 'Revisions to the California State Implementation Plan, San

Joaquin Valley Unified Air Pollution Control District', 67 Fed. Reg. 9209, 9211 (Feb. 28, 2002)("The CAA requires that RACT level of controls be implemented at major sources of NOx year-round."). The Part 237 program is not specifically designed as an ozone control measure and is not part of the State's ozone attainment SIP. NOx allowances from the different Part 204 and Part 237 programs may not exchanged for compliance purposes. Thus, use of NOx allowances from the two programs could not be combined in some fashion to constitute a statewide, year-round RACT measure.

The use of allowances to comply with the NOx RACT provisions is complicated by the additional reporting and record keeping that would be required to document compliance. Under the proposed revisions a stationary internal combustion engine need only perform a stack test to demonstrate compliance. If allowances were to be allowed for compliance, a source would need to document the operating profile of the source and determine its mass emissions. Any emissions over the RACT level would need to be offset with NOx allowances from the Part 204 program. This would greatly increase the reporting burden on the source and the requisite review by the Department.

The use of allowances is further complicated because of the monitoring burden that would be placed upon the subject sources. The Part 204 NOx budget program requires continuous emission monitor systems (CEMs) to measure emissions. CEMs are used because of their ability to accurately measure actual emissions. The monitoring requirements for stationary internal combustion engines are much less stringent. To be included in a trading program, monitoring provisions would have to be much more comprehensive to allow for participation in an emissions trading program.

7. Comment:

The current system of taking an operating limitation to enable a source be granted a synthetic minor permit in order to avoid a BACT evaluation is not workable. The Department should consider amending the regulations to exempt stationary sources outside the New York City metropolitan area that emit below a threshold of NOx emissions (e.g.,100 tons per year) from the requirement to install additional NOx controls. If a source which is granted an exemption exceed 100 tons per year in any consecutive twelve-month period, the company would submit a compliance schedule to the Department for retrofitting the engines with controls. (3)

Response:

NOx RACT is required of all major sources in New York State (Clean Air Act §§ 182(b)(2), 182(f) and 184(b)(1)(B)). A major source is defined in 6 NYCRR 201-2.1(b)(21) as one that emits 100 tons per year of NOx (25 tons per year in severe ozone nonattainment areas). If the source holds a permit to emit as a major source, then RACT applies.

8. Comment:

The amended regulation proposes that internal combustion engines be controlled to 1.5 g/hp-hr or 90% of the 1990 baseline emissions of the particular unit. For many of the existing engines in natural gas transmission service that have been retrofitted with emission controls, experience has shown that neither of these emission rates can be maintained across the entire operating range of the engine and in all ambient conditions. While Department staff indicated in meetings that industry should "do what it can" to approach the levels proposed in the regulations, the regulations should provide a method for the agency to approve and permit alternative emission rates. (3)

Response:

The current and proposed regulations allow facilities to propose an alternative emissions limitation if the RACT analysis shows that it is technically or economically infeasible to achieve the presumptive RACT emission limitation. The Department has established a methodology to review and approve alternative emission rates as part of case-by-case RACT determinations. This methodology is found in Air Guide 20.

Air Guide 20 requires a "top down" cost analysis. If the cost of a technology is calculated to be greater than the "cost of RACT" (see Air Guide 20 for the upper economic limit of RACT), then that control technology is not deemed to be RACT.

From Air Guide 20:

"As part of any RACT determination, several control options must be investigated, with some form of control mechanism or equipment modification mandated by the economic analysis. Those options must include an economic analysis for the control strategy or equipment modification required in the appropriate regulation as well as two strategies calling for lesser degrees of control which the company can feasibly afford."

"A facility will not be required to implement any emission reduction or control technique that is more costly than these limits, based on the cost calculated using Table 1. If there are no control options for a source which can be installed at or below these costs, then the source, although uncontrolled, will be in compliance with RACT."

To determine the controls that are to be required to be implemented by this regulation, the source owner needs to assess those technologies that would allow the presumptive RACT emission limitation in the regulation to be met. If those technologies are determined to be technically (detrimental to equipment or significantly reducing

reliability) or economically (cost more than the Air Guide 20 limit) infeasible, the source owner is then required to investigate control technologies that would maximize the reduction of NOx below the cost guideline of Air Guide 20. It is possible that no controls are feasible within the prescribed economic limits of Air Guide 20, in which case RACT would be no controls. In other words, only those NOx reduction technologies that are technically feasible and do not exceed the Air Guide 20 cost threshold are considered to RACT and will be required by this regulation.

9. Comment:

The Department has proposed allowing companies to average emissions of multiple units to achieve an average emission rate of 1.5 g / hp-hr. This averaging scheme is not workable. To achieve an average rate of 1.5 g / hp-hr, a portion of the existing engine population must operate at emission rates that are significantly less than 1.5 g / hp-hr to offset the emissions of engines that cannot achieve the emission target. As stated earlier, 1.5 g /hp-hr is an emission rate that is not achievable by many units by retrofitting emission controls. (3)

Response:

The commenter is correct in his analysis of the averaging provisions of the regulation. To have an approvable RACT averaging plan, there needs to be a balance between units operating above and below the specified emission rate. Still, one must keep in mind that RACT is determined by the ability of a group of similar sources to meet a level of control within certain cost parameters. There will always be variability in the ability of similar sources to meet an emission limit because of the operating parameters of the units and the efficacy of emission controls on those units. The RIS contained the Department's analysis of the ability to control existing engines and the costs related to those controls. From this analysis the Department determined the RACT emission rate. The Department also understands that certain units may not be able to meet these emission rates and because of that placed provisions in the regulations that allow for compliance options (such as averaging) and case-by-case

RACT determinations (that take the technological and economic feasibility of specific units into consideration). Therefore, averaging is meant to be an avenue for compliance that needs to be explored if an owner cannot meet the RACT emission limit for each of its sources, but it is not meant to be the only avenue or the last resort. If needed, a source can always explore the option of a case-by-case RACT determination.

10. Comment:

The schedule proposed in this amendment is unrealistic. With permit applications and compliance schedules due by July 1, 2004, it is likely that the DEC will not issue all the permits before the proposed deadline. Under these circumstances companies will be unable to retrofit their source by the proposed deadline. The proposed rule does not appear to allow the Department to approve compliance schedules that may extend beyond April 2005. DTI has determined that it must schedule retrofits at its facilities in NY over at least a three-year period in order to maintain availability for minimum services levels. While staff has stated a willingness to allow sources to extend compliance beyond the deadline, it is not clear that the rule provides a mechanism for granting such approvals. (3)

Response:

The Department believes that there is ample lead time for source owners to complete and submit compliance plans by July 1, 2004 and for the Department to review and issue all permits before the April 1, 2005 deadline. These deadlines were set to allow for ample time for developing the compliance plans, review of the plans and issuance of the necessary permits, including the public process. The Department does not intend to extend compliance beyond the deadlines established in the regulation.

11. Comment:

When engines are retrofitted to reduce NOx emissions there is normally a collateral increase in carbon

monoxide (CO) and volatile organic compound (VOC) emissions. The proposed rule does not indicate how the Department will address permitting such emission increases when engines are retrofitted. Consistent with EPA's concept for pollution control projects, the Department should clarify that NOx reductions provide a net benefit when considered with collateral increases of other pollutants. (3)

Response:

The source will need to address this issue in its compliance plan. Obviously, if in achieving a NOx limit it is believed that a source cannot meet a CO or VOC limit, then the appropriateness of this control strategy must be re-evaluated. Nevertheless, the Department believes that the increases to VOC and CO emissions will be minimal and are outweighed by the decrease in NOx emissions that will result from this regulation. EPA established emission reduction targets that it believes will allow for attainment of 1 hour ozone NAAQS in the New York City metropolitan area. This regulation will reduce NOx emissions in that area that are consistent with EPA's emission reduction targets.

12. Comment:

EPA takes this opportunity to remind New York that it needs to submit an analysis which affirms that the amendments to Subpart 227-2 will result in sufficient reductions of NOx emissions to meet the shortfall identified by EPA necessary to achieve attainment of the l-hour ozone NAAQS in the New York City metropolitan severe ozone nonattainment area. A similar analysis needs to be provided for the five Volatile Organic Compound (VOC) regulations being adopted by New York to meet the VOC shortfall in the New York metropolitan nonattainment area. This documentation for the VOC and NOx shortfalls should be submitted with the SIP revision that includes the adopted NOx RACT regulations (since it is the last of the OTC rules being adopted by New York), no later than December 31, 2003.

This analysis should identify New York's share of the shortfall (that portion of the 85 tons per day (TPD) of VOC and 7 tpd of NOx shortfall identified by EPA which New York is responsible for). New York should also affirm that the six OTC rules, as adopted by the State, achieve the necessary shortfall reductions. In doing so, New York should consider alternate control limits/procedures as allowed by these rules. In addition, New York should provide an estimation of the tpd reductions associated with each adopted rule, and whether reductions from outside the New York City metropolitan nonattainment area will be utilized to make up part of the shortfall. (4)

Response:

The Department acknowledges its responsibility to perform these tasks and will be submitting revised projection emission inventories after all six of the ozone measures have been adopted. The five VOC rules are complete and the VOC projection inventories updated with the new control estimates are under development. Upon completion of this regulation, the NOx projection inventory will be completed and both the VOC and NOx projection inventories will be released for public comment and submitted to EPA for review and approval.

13. Comment:

Throughout the amended Subpart 227-2 regulation, New York has deleted the May 31, 1995 compliance date for sources meeting the Clean Air Act (CAA) requirements for NOx RACT. Since May 31, 1995 is the compliance date mandated by the amendments to the 1990 CAA and since Subpart 227-2, although amended to meet the State's NOx shortfall for ozone attainment purposes, is New York's RACT regulation for controlling NOx emissions from stationary sources, New York should not delete reference to May 31,1995. The exception to the May 31,1995 compliance date is New York's amendments to section 227-2.4 (f), for stationary internal combustion engines, which has been proposed for revision to lower the applicability and emission limits to enable New York to meet the NOx shortfall. In this latter case, the new compliance date is April 1, 2005. (4)

14. Comment:

As stated earlier, New York should not delete the May 31,1995 Clean Air Act RACT compliance date, as proposed throughout this section. At the very least the proposed revisions are unclear on the compliance date for all source categories other than stationary internal combustion engines. At its worst, the lack of a specific compliance date (with the only appropriate date being the Clean Air Act RACT compliance date) will make the proposed revisions unenforceable upon adoption, except for those sources subject to subdivision 227-2.4(f) and those sources complying with alternative emission limits pursuant to subdivision 227-2.5(c). (4)

15. Comment:

New York should retain the May 31,1995 RACT compliance date throughout this section, except for those sources subject to subdivision 227-2.4(f) and those sources complying with alternative emission limits pursuant to subdivision 227-2.5(c). (4)

Response:

The Department sees no need in retaining compliance dates in its regulations which passed several years ago. At the time that the original rule language was promulgated, the references to the May 31, 1995 compliance date were necessary because that date was then in the future. Ordinarily, the Department does not include specific dates for compliance in any regulation because compliance becomes mandatory for subject sources on the effective date off the regulation. This is true of the present rule revisions. With the exception of certain provisions which do not become mandatory until a future date (see for example proposed 6 NYCRR section 227-2.3(a)(1)), there is no need to retain other past dates in the regulation.

The commenter is incorrect in its contention that requirements of the existing regulation will become

unenforceable upon adoption of the proposed rule. The provisions, which have not been materially changed, become newly enforceable upon adoption. The provisions of the proposed revisions apply to all subject sources, both existing and new, that are included in the categories of sources listed in proposed section 227-2.1(a).

Any violations of the provisions of the existing regulation that occur prior to the effective date of the proposed revisions remain enforceable pursuant to General Construction Law section 94, Effect of repealing statute upon existing rights, which provides as follows:

The repeal of a statute or part thereof shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected.

General Construction Law section 94 applies to administrative rules and regulations promulgated pursuant to statutory authority. Matter of Pomerantz v. Board of Regents of Univ. of State of N.Y., 410 NYS2d 691, 692 (3 d Dept 1978); Ireland v. Zoning Bd. of Appeals of Town of Queensbury, 606 NYS 2d 843, 845 (3d Dept 1994).

16. Comment:

According to New York's "Summary of Express Terms" on page 2 and "Regulatory Impact Statement" document on pages 28 and 29, emission sources which received alternative emission limits pursuant to existing 6 NYCRR 227-2.5(c) will be required to reevaluate their alternative emission limit. EPA applauds New York's efforts in revisiting the previously approved alternative emission limits, given the advancements in control technology and the reduction in the costs of control that have occurred since adoption of the original NOx RACT regulation in 1994.

However, in order to determine the effectiveness of this requirement, New York should provide EPA with a comprehensive list of all NOx RACT alternative emission limits currently approved by New York pursuant to existing 6 NYCRR 227-2.5(c).

This comprehensive list will provide regulators and the public with the scope of sources required to reevaluate their alternative emission limit under the proposed revision. Also, this list will identify which alternative emission limits have yet to be submitted to EPA for SIP approval. EPA is aware of several sources, that while New York may have approved an alternative emission limit or a case-by-case RACT determination, the source's RACT plan has not been submitted to EPA for SIP approval. New York and EPA must ensure sources are currently in compliance with RACT, regardless of the proposed revisions to the RACT regulation that may be approved in the future. EPA is providing a list below to summarize EPA's knowledge of source-specific SIP revisions for NOx RACT. New York should provide its own comprehensive list, incorporating EPA's list.

Source	SIP Status
Champion/Niagara Mohawk	SIP-approved emission trade
Algonquin engines	SIP-approved
Morton International	SIP-approved
University of Rochester	SIP-approved
Tenneco engines	SIP-approved
General Chemical	under review by EPA
Kodak -boilers	SIP under review by EPA
Adirondack RRF RACT SIP	superceded by State MWC plan

Babylon RRF RACT SIP	superceded by State MWC plan
Charles Point RRF RACT SIP	superceded by State MWC plan
Dutchess Co. RRF RACT SIP	superceded by State MWC plan
Hempstead RRF RACT SIP	superceded by State MWC plan
Islip McArthur RRF RACT SIP	superceded by State MWC plan
Kodak -other NOx sources	no SIP submitted
CNG Transmission	no SIP submitted
Corning	no SIP submitted
Cornell University	no SIP submitted
Globe Metallurgical	no SIP submitted
TAM Ceramics	no SIP submitted
Finch Pruyn & Co.	no SIP submitted
Lyons Falls Pulp & Paper	no SIP submitted
Southern Electric (UDG)	no SIP submitted
Tonawanda Coke	no SIP submitted
IBM Endicott	no SIP submitted
Tenneco -#224, #241	no SIP submitted
National Fuel -	no SIP submitted
(Nashville, Beech Hill, and Independence stations)	
Parkchester South Condo	no SIP submitted

In addition to a comprehensive list, New York should submit all outstanding source-specific SIP revisions for alternative emission limits and case-by-case RACT determinations as soon as possible. Depending on the timing

of the adoption and effective date of the proposed revisions to 6 NYCRR 227-2, EPA will work with New York to determine those instances where the SIP submittal of a reevaluation of an alternative emission limit may supercede an outstanding SIP submittal pursuant to the existing 6 NYCRR 227-2.

Finally, if the proposed revisions to 6 NYCRR 227-2 are adopted, New York should provide a listing of all reevaluated alternative emission limits submitted pursuant to the revised 6 NYCRR 227-2. (4)

Response:

The Department is committed to providing EPA with the necessary background information that it is requesting.

17. Comment:

Subdivision 227-2.4(f)(3) includes the term "1990 actual baseline emissions." This should be defined in Section 227-2.2. (4)

Response:

The term "actual 1990 baseline emissions" and its definition have been added to the proposed regulation.

18. Comment:

Paragraph 227-2.3(a) includes the term "commence commercial operation." This should be defined in Section 227-2.2. (4)

Response:

The term "commence commercial operation" and its definition have been added to the proposed regulation.

19. Comment:

In the revised definition #21 for "weighted average allowable emission rate" New York should clarify that the mass emission rate of the sources in operation is equivalent to the mass emission rate achieved with each source operating in compliance with the most stringent applicable NOx emission limit. (4)

Response:

This language have been added to the proposed regulation.

20. Comment:

Similar to the issues raised with the compliance dates, New York should not delete the existing applicability sections and compliance and operating plan provisions as proposed in section 227-2.3. These deletions could impede efforts to determine compliance with reporting and other requirements by other source categories and may have implications with Title V permitting efforts. EPA suggests New York retain the existing sections instead of deleting them and then include the new sections on applicability under a separate section. It's important to note this regulation is New York's underlying statewide NOx RACT regulations, intended to establish the foundation for NOx control and reporting requirements for all combustion sources, not just for the revised emission limits for stationary internal combustion engines. (4)

Response:

Section 227-2.3 is being revised to make the section more understandable. All sources subject to Subpart

227-2 prior to the effective date of the proposed revisions were obligated to provide both a compliance plan and an operating plan under existing section 227-2.3. As explained in the response to comments 13, 14 and 15 above, any source's failure to provide proper compliance and operating plans pursuant to section 227-2.3 remains subject to enforcement. However, the existing section is confusing in a number or ways. For example, while the section is titled "Compliance plan and deadlines," it contains no explicit statement of what a compliance plan should consist. The section does, however, include a detailed description of the elements of the operating plan requirement. The proposed revisions to section 227-2.3 retain the essential elements of the compliance and operating plan requirements and include the future dates for compliance by applicable to certain sources. The requirements of the compliance plan are now more clearly set forth. The existing section also contains now expired compliance dates and references to permitting documents the Department no longer issues - permits to construct and certificates to operate. The terms of the permits to construct and certificates to operate were incorporated into the permits issued over the last several years pursuant to the Department's modern permitting structure which was established when 6 NYCRR Part 201 was revised in 1996. Other obsolete language such as that contained in existing 227-2.3(a)(4) is being deleted. The Department sees no need to retain a provision establishing the expiration of certificates to operate. The expiration of certificates to operate occurred after the effective date of the existing regulation but over nine years prior to the anticipated effective date of the proposed revisions.

21. Comment:

New York should clarify how the new proposed subdivision 227-2.3(d) ensures all alternate emission limits will be reevaluated and resubmitted to New York. New York should include a provision that states those sources complying with alternative emission limits pursuant to subdivision 227-2.5(c) are subject to the compliance plan and operating plan requirements of this section. In addition, New York should remove the reference in new proposed subdivision 227-2.3(d) to "earlier versions of this Subpart" since earlier versions will have no meaning

after this proposal is adopted. (4)

Response:

Language has been added to paragraph 227-2.3(a)(1) requiring sources that received alternative emission limits (as part of a case-by-case RACT determination under section 227-2.5(c)) to submit an updated compliance plan to the Department. This will clarify the language in subdivision 227-2.3(d).

22. Comment:

The last sentence in the opening paragraph under section 227-2.4, on page 10, should be revised to clarify that each case-by-case RACT determination "must be submitted to the Administrator for approval by EPA as a State Implementation Plan revision." Also, since there may be sources in New York that were late in complying with NOx RACT or other sources that have not yet complied, and since New York is proposing to delete existing subdivision 227-2.5(e), New York should clarify the opening paragraph in new proposed section 227-2.4 by specifically referencing each subdivision that contains a provision for a case-by-case RACT determinations to be approved by NYSDEC and the Administrator as a SIP revision, that is 227-2.4(a)(2), 227-2.4(b)(2), 227-2.4(c)(1)(iii), 227-2.4(c)(1)(iv), 227-2.4(e)(3), and 227-2.4(g). (4)

Response:

6 NYCRR 200.1(b) defines the term Administrator as the Administrator of the United States Environmental Protection Agency or designee. It would be redundant to include this proposed language. This sentence will remain unchanged.

The requirement set forth in existing section 227-2.5(e) has not been deleted. Rather, it was simplified

(without the list of individual cross-citations) and moved to the introductory text of section 227-2.4. By placing this requirement in the introductory text of section 227-2.4, the requirement now clearly applies to all the relevant case-by-case determinations authorized by that section. The pertinent text of the proposed revisions reads as follows:

> Each case-by-case determination which establishes RACT requirements in a source's permit must be submitted to the Administrator as a separate State Implementation Plan revision.

Each subdivision in section 227-2.4 clearly demarcates which provisions involve case-by-case determinations. The Department sees no need to include a redundant listing of specific citations. Additionally, the Department observes that as the number of unnecessary cross-citations are included in a proposed regulation increases, the risk of citation errors that can occur as a result of the present or future rule makings increases.

23. Comment:

In each provision for a case-by-case RACT determinations [227-2.4 (a)(2), (b)(2), (c)(l)(iii), (c)(l)(iv), (e)(3), and (g)], New York should require sources to include the appropriate emission limit that reflects the technology selected as RACT . (4)

Response:

Language to this effect has been added to the proposed regulation.

24. Comment:

In paragraph 227-2.4(c) for 'mid-size boilers,' on page 14, New York should clarify the requirements for mid-size boilers as follows: 'The owner or operator of a mid-size boiler must comply by May 31, 1995 with ' either:

(1) 'the presumptive RACT technology provisions of subparagraph (l)(i) or (l)(ii) of this subdivision or, (2) the presumptive RACT emission limits of paragraph (2) of this subdivision or', (3) a case-by-case RACT determination pursuant to subparagraphs (l)(iii) or (l)(iv) of this subdivision, as applicable. (4)

Response:

The Department considers the suggested revision to be more confusing and grammatically incorrect. The Department considers that the use of the disjunctive conjunction "or" in its present place adequately demonstrates that the RACT options are to be considered in the alternative rather than in any additive sense. The present language in the proposed regulation sets forth three distinct and separate RACT compliance choices for mid-size boilers. "Either -- or" is defined as a "strictly limited choice or division between two options." The American Heritage College Dictionary 440 (3rd ed. 2000).

25. Comment:

In new proposed subdivision 227-2.4(f)(3) New York should provide a definition for the term "actual baseline emissions" including a clarification as to how this applies to: (a) sources that are either controlled or uncontrolled; and (b) to sources that commenced operation after 1990. Also, since there may be some uncertainty as to a particular source's 1990 actual baseline emissions, and since the methods used to establish the baseline emissions for the affected equipment must be approved by the Department, New York should provide EPA with a list of all stationary internal combustion engines complying with NOx RACT by using this option of 90% or greater reduction, as well as a copy of the Department's determination. This list of sources would be required after the Department approves the permit. Lastly, New York should delete the word "alternative" from the subdivision since it may be interpreted as requiring a SIP revision which would not be the case. (4)

Response:

The term "actual 1990 baseline emissions" and its definition have been added to the proposed regulation. If a source chooses this control option, it must provide information showing that it has made at least a 90% reduction in its permissible emissions from the level of its actual 1990 baseline emissions. Whether the source was controlled after 1990 is not relevant to this determination. Since this provision requires "actual 1990 baseline emissions," it is not available to sources that commenced operation after 1990. The Department will provide EPA with a list of all facilities that rely on this control option. As suggested, the word "alternative" has been removed from this paragraph.

26. Comment:

Paragraph 227-2.4(f)(4) for "stationary internal combustion engines" allows for an exemption from the requirements of subdivision 227-2.4(f) for emergency power generating engines and engine test cells at engine manufacturing facilities. New York should consider including the applicable requirements for emergency generators stated in section Env-A xxxx.02 Applicability, paragraph (b) on page 7 and section Env-A xxxx.06 paragraphs (b), (c), (e), (f) and (g) on pages 14 through 17 from the Ozone Transport Commission's (OTC's) Model Rule for "Additional Nitrogen Oxides Control Measures" dated March 6,2001. The referenced sections to the OTC's Model Rule for control of NOx emissions relates to:

-"the emergency generator is operated only during emergencies due to circumstances beyond the control of the owner or operator of the facility including a power outage or when a power outage is forecast to occur within three (3) hours by the electric service provider, or for testing the engine to ensure operability." [Env-A xxxx.O6 (b)]

-" the owner or operator of an emergency generator shall not test the emergency generator on days when air

quality is predicted by the State or designated Agency to be at least "unhealthy for sensitive groups" as defined in the U.S. EPA's Air Quality Index." [Env-A xxxx.O6 (c)]

-paragraph Env-A xxx.O6 (e) that relates to stationary reciprocating engines and the requirement of adjustment of the ignition/injection timing and related recordkeeping.

-" the emissions from emergency generators shall be included in the calculation of both the actual and potential emissions of a facility."[Env-A xxxx.O6 (t)]

-" the recordkeeping and reporting requirements for emergency generators shall be in accordance with the provisions of Env-A xxxx, Env-A xxxx and Env-A xxxx, respectively" (These sections refer to individual State recordkeeping, reporting, and emission statement requirements). [Env-A xxxx.O6 (g)] (4)

Response:

The Department did consider the OTC NOx Model Rule language for both emergency generators and for engine test cells. The Department decided not to use that language and has instead essentially moved the text of the definition found at existing 6 NYCRR section 201(b)(6) to the proposed section 227-2.2(b)(7).

27. Comment:

The last paragraph of paragraph 227-2.4(g) for "other combustion sources" states that a case-by-case RACT determination is not required for sources either with a deminimis level of emissions or for "combustion installations that are similar to those regulated under subdivisions (d), (e) and (f) of this section and that comply with the appropriate presumptive RACT limit." Since these latter sources would be in compliance with the appropriate

presumptive limit, it seems unnecessary to include wording stating that a case-by-case RACT determination is not necessary. New York should clarify the purpose of these proposed provisions. (4)

Response:

This language was added for sources that are similar but are not regulated under those subdivisions. For example, a residual oil fired boiler that has a heat input rate of 9 mmBtu/hr would be required to conduct annual tune-ups. This boiler is similar to the small boilers (20 to 50 mmBtu/hr heat input) in paragraph 227-2.4(d). Thus, it would not be required to conduct a case-by-case analysis. The Department considers the proposed language to be appropriate and declines to further revise it.

28. Comment:

On page 2 of the Summary of Express Terms, New York includes a statement that the rulemaking will allow flexibility for sources which utilize CEMs. New York should provide some explanation of the proposed flexibility to CEM requirements. (4)

Response:

The sentence on flexibility in the text summary has been expanded to include a more informative explanation.

29. Comment:

It appears that the proposed revisions to 227-2.6, if adopted, will be a relaxation of current requirements for source categories, other than stationary internal combustion engines, to comply with the CEM monitoring plan and certification requirements. New York should not adopt these revisions to 227-2.6.

Secondly, New York should clarify why the CEM requirements in 227-2.6 are only applicable if the source is obligated to submit a compliance plan under the new proposed compliance plan provisions. The new proposed compliance plan provisions would only apply to stationary internal combustion engines, however stationary internal combustion engines aren't required to have CEMS. New York should clarify who would be submitting a new compliance plan and be applicable to the proposed revisions to 227-2.6. (4)

Response:

When the existing text of section 227-2.6 was originally promulgated the only applicable CEMs requirements were set forth at 40 CFR Part 60. Therefore, sources that were required to monitor with CEMs (boilers and non-peaking gas turbines greater than 250 mmBtu/hr heat input) had to use the 40 CFR Part 60 monitoring requirements. The majority of these sources are now also required to comply with the monitoring requirements set forth at 40 CFR Part 75 because they are subject to the federal Acid Rain Program established under Title IV of the federal Clean Air Act and/or the NOx Budget Trading Program established at 6 NYCRR Part 204. Thus, the Department has decided to allow those sources the flexibility of using the 40 CFR 75 monitoring requirements in place of the 40 CFR 60 requirements to avoid needless dual monitoring requirements.

The applicability of the CEM requirements in section 227-2.6 is not limited to stationary internal combustion engines for which lower emission limitations have been set. Any source may choose to meet its monitoring obligations under Subpart 227-2 by using a CEM. The source may do so at any time. A source that employs this option would be required to submit a revised compliance plan for Department approval. Sources have been allowed to "opt-in" to CEM monitoring since the promulgation of 227-2 and will continue to have this option under the proposed revisions.

30. Comment:

Environmental Defense strongly supports this step by the Department of Environmental Conservation to carry out the Ozone Transport Commission's (OTC) six model rules. We support the RACT rule, and we urge the Department to immediately finalize this proposed regulation.

We believe that full implementation of all six of the Ozone Transport Commission model rules will help mitigate harmful ozone pollution levels in New York. We urge New York to encourage other northeastern states to also carry out these ozone abatement measures. (5)

Response:

The Department appreciates the comment.

31. Comment:

The applicability section should clarify that the requirements of the regulation apply to internal combustion engines greater than or equal to 200 horsepower.

Section 227-2.1(a) establishes the applicability criteria and identifies the stationary source categories subject to the rule. Item six lists internal combustion engines but makes no distinction regarding the size of an engine subject to the rule. This makes operators of even the smallest combustion engines, e.g., 25 horsepower generators, subject to most provisions of the rule even though New York only proposes emissions standards for engines greater than or equal to 200 hp in Section 227-2.4.

Section 227-2.1(a) should be clarified to exempt operators of small generating sources from the

administrative reporting and compliance planning requirements of Section 227-2.3. Since no RACT standards are applicable to engines under 200 hp, the reporting, compliance plans, and operating plans required to be submitted by all operators subject to the rule are simply an unnecessary administrative and paperwork burden. Such paperwork burdens increase the cost of the regulation to the operator and to the State but do not result in any emissions reductions or improvements in air quality.

There is no reason for operators of generators under 200 hp to comply with the administrative requirements of Section 227-2.3. Including a horsepower limitation to clarify that Section 227 applies to internal combustion engines 200 horsepower or larger resolves this issue. (6)

Response:

Stationary internal combustion engines of less than 200 brake horsepower in size that are not used for or specified as emergency equipment are not exempt from the provisions of this rule if they are located at major sources. These engines would have to be reviewed under section 227-2.4(g). The Department has determined (and EPA has approved this determination) that a source is 'de minimus' if it has a potential emission rate of fewer than 3 pounds per hour and 15 pounds per day of actual emissions. If a source is 'de minimus', it is not required to conduct a RACT analysis. If the source's emissions exceed either of these levels, the source must perform a RACT analysis. RACT is required at all existing major sources of NOx by Clean Air Act §§ 182(b)(2), 182(f) and 184(b)(1)(B).

32. Comment:

The definition of emergency power generating stationary internal combustion engine should be revised to allow unlimited operation under emergency conditions.

Section 227-2.2 (a) (5) defines emergency power stationary engines as those engines that operate less than 500 hours per year including any emergency operations. New York should not place a regulatory limit on the number of hours that emergency generators can operate under emergency conditions.

Emergency generators are designed and operated to provide power during emergencies such as hurricanes, floods, and ice storms or when power from the central grid is disrupted. In many cases, emergency generators provide power to critical facilities such as police stations, hospitals, government disaster relief agencies, and flood control pumping stations. Emergency generators provide life-saving functions, and no limit should be placed on their operation under emergency conditions. The need to generate electricity in an emergency situation does not depend on how long an emergency generator operated in the past.

It is appropriate, however, to place limits on the operation of emergency generators under non-emergency conditions. This includes necessary maintenance, testing, and exercising of the engine throughout the year. EMA recommends that the final regulation place a 200 hour annual limit on such activity.

The definition of emergency power generating stationary internal combustion engine should be revised as follows:

"A stationary internal combustion engine that operates as a mechanical or electrical power source only when the usual supply of power is unavailable, and operates for no more than 200 hours per year under non-emergency conditions. Non-emergency conditions include routine maintenance, testing, and exercising to assure reliability or compliance to codes and standards, operating as a peak shaving generator, or operating under voluntary agreements to reduce grid demand when there is no imminent threat of grid failure." (6)

Response:

Emergency engines cannot be allowed unlimited operation in New York State. The current definition of emergency engine (which among other conditions limits the engine to 500 hours of operation) has been accepted in the New York SIP by EPA. This limitation has been in place in New York State for many years and to the Department's knowledge has not caused any disruption in essential services. Removing this limitation could be considered a "backsliding" in our regulatory obligations. This change would likely be unacceptable to EPA and would be counterproductive to the Department's efforts to reduce NOx emissions to address the emissions reduction shortfall identified by EPA.

33. Comment:

The presumptive RACT standards and alternate emissions rate reduction option for internal combustion engines proposed in Section 227-2.4 (f) provide technically feasible and flexible compliance options that should be adopted in the final rule.

New York has proposed a series of RACT emissions standards for internal combustion engines in Section 227-2.4 (f) that recognize the inherent differences in operating and emissions characteristics of various engine types and vary accordingly. In addition, New York proposes to give existing operators additional flexibility by providing an alternate compliance option to reduce NOx emission by 90% compared to 1990 levels.

Although EMA believes that the proposed emissions standards are technologically feasible, compliance with the standards will be challenging and may require operators of existing facilities to add NOx emissions control technology such as catalysts or to replace existing engines with new, cleaner models. In some cases, particularly with older compression ignition engines that may have to add expensive SCR (Selective Catalytic Reduction)

systems, the cost of adding the emissions control technology may make the economic viability of the facility unacceptable. In such cases, operators may choose to decommission the facility with a resulting loss of generating capacity in the state. Although EMA considers the proposed standards to be technically feasible, their implementation may have significant economic consequences on facility operators.

EMA supports New York's approach to establishing RACT standards for internal combustion engines. The proposed standards are technically feasible and can be met through the use of advanced engine design or emissions control technology that should be reasonably available by the compliance date. In addition, the proposed standards provide operators sufficient flexibility to select the best compliance option. This flexibility will allow operators to significantly reduce NOx emissions in the most cost effective manner for their particular facility. (6)

Response:

The Department does not believe that the proposed revised presumptive RACT emissions limitations for internal combustion engines will have significant adverse economic consequences for most of these sources. The regulation provides great flexibility in meeting the presumptive RACT emissions limitations (e.g., through a case-by-case RACT determination and emissions averaging under section 227-2.5(c) and (b), respectively).

34. Comment:

EMA supports the exemption for emergency power generating engines and engine test cell facilities.

Section 227-2.4 (f) (4) properly exempts emergency power generating engines and engine test facilities from complying with the RACT standards. EMA supports these exemptions.

In the case of emergency generators, the addition of supplemental emissions control equipment may adversely affect the ability of an emergency generator to perform its function. Due to their critical function of providing potentially life-saving power, government and national standard setting bodies, such as the National Fire Protection Association, have set very tight performance standards for emergency generators. The addition of after-treatment devices with resulting back-pressure or other performance limiting consequences has the potential to reduce engine performance or contribute to the failure to meet the necessary start-up and operation standards.

For this reason, it is important that emergency generators continue to be exempt from the RACT requirements. In addition, the typical emergency generator operates so infrequently that they contribute very little to ozone precursor inventories in the state. (6)

Response:

The Department appreciates the comment.

35. Comment:

The Incorporated Village of Rockville Centre owns and operates an independent municipal electric generating facility, constituting a critical source of electrical power for the residents of the Village. The Rockville Centre Power Plant (RVCPP) consists of eight diesel engine/generator units, of differing capacities and fuel capabilities, totaling ~3.6 MW. On March 14,1994, RVCPP submitted their NOx RACT Compliance Plan to the Department. The plan called for achieving compliance by maintaining the system-wide average NOx emissions in the Plant below 9.0 g/Bhp-hr, in accordance with 6 NYCRR Subpart 227-2.5(b). This NOx RACT compliance strategy was approved by the Department. RVCPP continues to operate in compliance with this plan.

The Village and the RVCPP management wholeheartedly support the efforts of the federal EPA and the Department to protect and improve the air quality. We have always endeavored to comply with the laws and regulations pertaining to the operation of our facility. However, we have two specific issues that concern us: (1) the discriminatory nature of the proposed revisions; and (2) the misapplication of Subpart 227-2 to achieve immense reductions in emissions from a single category of equipment.

The NOx RACT regulations set presumptive emission rates for existing combustion sources: boilers of all sizes, combustion turbines, and internal combustion engines; in addition, they specify a methodology for all other combustion equipment to achieve a case-by-case RACT emission level. As presently configured, the regulations reflect emission rates that are generally achievable, in equipment category, by the equipment itself, without the need for extensive and expensive external controls. The RACT regulations reflect the technology available in each of the equipment categories, and the emission levels can be achieved, in most cases, by proper maintenance and operation of the equipment. The proposed regulations maintain this reasonable approach for all equipment categories except one - internal combustion engines. In terms of the impact on the RVCPP, the proposed regulations require that the owners of internal combustion engines reduce emissions by an astounding 75 percent, a performance level that is far in excess of any engine currently on the market and certainly unattainable for any existing engine, without extensive external controls. At the same time, the proposed regulations do not change the acceptable RACT emission levels for any other equipment category. We regard this proposed solution to the EPA/NRDC lawsuit to be the very definition of discrimination. It is inconceivable that a more equitable proposal could not have been prepared. (7)

Response:

Until 1994, the source category of stationary internal combustion engines was largely unregulated. The

presumptive RACT emissions limitations for stationary internal combustion engines set forth in existing Subpart 227-2 reflect the lack of available control technologies at the time that the rule was first promulgated. Over the past ten years several control techniques have been improved or developed for stationary internal combustion engines. Based on the cost analysis conducted by the Department and referenced in the RIS, the proposed limits meet the current technological and economic parameters for RACT.

36. Comment:

The Village and the RVCPP management recognize that internal combustion engines are significant sources of emissions, and we support efforts to improve engine technology in this regard. However, we can only support rational efforts, such as the EPA's current program to reduce mobile diesel engine emissions. This program is being phased in over a period of years and affects manufacturers of new equipment coming to the market. Owners of existing equipment are encouraged to join a voluntary diesel retrofit program to improve their emissions performance, a program that includes economic incentives and an emissions trading feature. We believe that the Department's intent to achieve enormous reductions in the emissions from a particular category of equipment is a misapplication of the Subpart 227-2 regulations. In effect, the Department is trying to achieve "overnight" what the EPA recognizes takes a significant time period. Furthermore, the EPA realizes that the reductions must come from new technologies, because the costs of retrofitting existing equipment are generally prohibitive and constitute an unfair burden on the owners. (7)

Response:

Based on the cost analysis conducted by the Department and referenced in the RIS, the proposed limits meet the current technological and economic parameters for RACT. The mobile diesel program is quite different in that mobile sources do not have the same control options as stationary engines. The stationary source RACT program

is based on control technology that is currently available, while the mobile program involves a certain amount of development of new technologies that can be applied in the very different area of mobile sources.

37. Comment:

The Village and the RVCPP management are aware that there is a provision within Subpart 227- 2 that allows for a case-by-case RACT determination based on the technological and economic circumstances of the individual source, essentially a top-down BACT-like analysis, that results in a dollar per ton-removed cost for implementing various emission controls. The RVCPP certainly intends to avail itself of this analytical approach. However, regardless of how that analysis turns out whether the cost is shown to be exorbitant, or within the parameters set by the Department as "reasonable" the Village residents will still have to pay a significant sum to satisfy a regulatory action which unfairly targets a small segment of the regulated community. (7)

Response:

The compliance options are retained in the proposed revisions to Subpart 227-2. The Department has tried to allow affected sources significant flexibility to meet the proposed revisions, while sufficiently reducing NOx emissions to meet EPA's requirements. The Department recognizes that there are costs related to controlling emissions and as required by the State Administrative Procedures Act performed an analysis in the RIS to determine those costs. The Department believes that it is meeting its obligations to meet EPA requirements to reduce NOx in a cost effective manner.

38. Comment:

The DEC has improperly relied upon faulty and outdated analysis from the U.S. EPA EC/R Report and ACT Document in defining the level of the standard and the percent reduction achievable for lean burn engines in gas

transmission. (8)

Response:

The Department used several documents in determining the proposed presumptive RACT emissions limitations in the Subpart 227-2 revisions, all of which are cited in the RIS. The Department used the OTC NOx Model Rule and actual stack test data to aid in determining these emissions limitations. The Department believes that the emissions limitations are both reasonable and achievable. The Department also believes that adequate compliance options exist that give a source additional flexibility to meet the RACT requirements. Finally a source is allowed to conduct a case-by-case RACT analysis if the relevant presumptive RACT emissions limitation is not economically or technically viable.

39. Comment:

The proposed emission level of 1.5 g/hp-hr or 90% reduction is not achievable as a retrofit combustion modification NOx control technology for most lean burn engines in the gas transmission industry.

While the Department chose to selectively present data in the Table provided to Tennessee Gas Pipeline (TGP) that, in the Department's view, implies that compliance with a 1.5 g/bhp-hr limit is conceivable, by not including relevant misrepresented available test data. Review of the data by engine type indicates results consistent with our claims - LEC equipped gas transmission engines have not demonstrated the ability to consistently achieve an emission limit less than 3g/bhp-hr. Even with this finding, note that this "dataset" should not be considered adequate to form the basis for a regulatory requirement. In addition to review of test data from New York State, the Department should refer to information that is available in the EPA NOx SIP Call Docket and discussed in the exhibits that accompany these comments. This information was collected to gain a better understanding of the

emissions performance typical for controlled natural gas-fired lean burn engines in gas transmission service - the same category of equipment that will be affected by the natural gas internal combustion engine requirements in the proposed amendments, and the same engine types that have been tested in New York and are presented in the Department's Table. We believe that this information is consistent with a 3.0 g/bhp-hr emission limit and a percent reduction of 80% or less. (8)

Response:

The proposed revisions to Subpart 227-2 impose more stringent presumptive RACT emissions limitations on internal combustion engines. Every subject source was required to implement NOx RACT by May 31, 1995. Compliance was required to be established through compliance stack testing. The source was required to either meet an emission rate limit set in the regulation (either through the installation of control equipment or the modification of the combustion source) or comply with an alternative RACT limit set as part of a case-by-case RACT determination. When Subpart 227-2 was originally promulgated in 1994, the Department decided against using a percent reduction from an uncontrolled level approach because it would have been more difficult to implement than simply having a target emission rate with the possibility of setting an alternative emission limit when it was demonstrated that a particular source could not meet the limit. To provide sources with additional flexibility, the proposed revisions allow an affected internal combustion engine to determine its NOx RACT emission limit by calculating a 90 percent reduction from the uncontrolled actual 1990 emissions baseline.

To determine the NOx RACT emission limits for internal combustion engines, the Department relied on studies, reports and comments derived from the process of developing the OTC NOx Model Rule as well as actual compliance stack test data from sources in New York. TGP provided comments to the OTC on the model rule and submitted compliance stack tests to the Department. These data were considered in setting the emission limits.

Actual compliance stack test data from TGP units in New York have shown very promising results. Where TGP applied the original equipment manufacturer (OEM) retrofit kits to their engines, emissions have often been below 1.5 g/bhp-hr. Emissions data from the TGP facilities are listed on the table below.

Station/Engine	Year	Rated (bhp)	Load (bhp)	NO_x Emission Rate (g/bhp-hr)	Current Limit (g/bhp-hr)
237/Ingersol KVS412	1996	2000	2341*	3.35	3.0
237/Ingersol KVS412	1996	2000	2035*	2.55	3.0
237/Ingersol KVS412	1996	2000	1848*	1.55	3.0
237/Ingersol KVS412	1996	2000	1705*	1.51	3.0
237/Ingersol KVS412	1996	2000	2070	1.19	3.0
237/Ingersol KVS412	1996	2000	1987	0.95	3.0
237/Ingersol KVS412	1996	2000	1567	0.44	3.0
237/Ingersol KVS412	2000	2000	2036	1.16	3.0
237/Ingersol KVS412	2000	2000	2025	1.02	3.0
237/Ingersol KVS412	2000	2000	2016	0.96	3.0
237/Clark TCV-12	1996	4000	3981	1.66	3.0
237/Clark TCV-12	1996	4000	3825	1.37	3.0
237/Clark TCV-12	1996	4000	3722	1.18	3.0
237/Clark TCV-12	2000	4000	4147.5	1.28	3.0
237/Clark TCV-12	2000	4000	4137	1.39	3.0
237/Clark TCV-12	2000	4000	4127	1.44	3.0
249/ Cooper 16V-250	2001	5500	5291	1.41	3.0
249/ Cooper 16V-250	2001	5500	5618	1.38	3.0
249/ Cooper 16V-250	2001	5500	5587	1.41	3.0
245/Worthington UTC-165	1995	1400	1407	5.64	7.0
245/Worthington UTC-165	1995	1400	1337	4.89	7.0

Station/Engine	Year	Rated (bhp)	Load (bhp)	NO_x Emission Rate (g/bhp-hr)	Current Limit (g/bhp-hr)
245/Worthington UTC-165	1995	1400	1296	4.97	7.0
245/Worthington UTC-165	2001	1400	?	5.72	7.0
254/Worthington UTC-165	1995	1400	1395	5.69	7.0
254/Worthington UTC-165	1995	1400	1309	5.27	7.0
254/Worthington UTC-165	1995	1400	1281	4.90	7.0

* This engine was inadvertently loaded to 115 percent load during the test and is not designed to operate at this level. It is not known whether or not this affected the other results run on this engine. The other results from the same year at this station are from another engine of the same model.

The Worthington engines do not have OEM kits available and received an alternative emission limit under the existing Subpart 227-2. It is likely that these units would continue to operate under an alternative emission limit.

The equipment listed in the above table represents 8 of the 10 engine types that TGP employs which are required to meet the current 3.0 g/bhp-hr NOx limit. The table contains compliance stack test data from TGP. These data indicate that these engines would currently meet the proposed 227-2 revised limit of 1.5 g/bhp-hr without the installation of additional control equipment.

These test data also show that a large portion of the stationary internal combustion compressor engines operating in New York State can meet the proposed limit of 1.5 g/bhp-h after the application of control technology. The Department determined that these data were a representative sample of the compressor engines being employed in this State. This information was used to determine the level of control that is reasonable and achievable.

40. Comment:

Additional case-by-case review for lean burn gas-fired engines already controlled under NOx RACT is not warranted. (8)

Response:

The alternative RACT analysis requirement is a compliance option in the existing section 227-2.5(c) and is retained in the proposed revisions.. If a source is unable to meet the presumptive RACT emissions limitation or utilize fuel switching or system-wide averaging, it is required to perform an alternative RACT analysis to determine an appropriate RACT emissions limitation. The compliance option provided by section 227-2.5(c) was approved by EPA as part of the New York SIP. The removal of this option might be considered "backsliding" by EPA and, consequently, the proposed revisions likely would not receive approval by EPA. Also, these case-by-case RACT determinations were required as part of the original NOx RACT implementation in 1995. Over the past eight years there have many improvements in emissions control technologies and, along with the update of NOx emission limits, the Department is requiring that each source having a case-by-case RACT determination update the previously approved determination in order to ensure that it is still appropriate.

It should be noted that the proposed regulations require every subject source that was granted an alternative emission limit as part of a case-by-case RACT determination under section 227-2.5(c) to reanalyze its original compliance plan to determine if RACT is a more stringent standard than is currently permitted. This requirement is not confined to just lean burn gas fired engines.

41. Comment:

The proposed RACT revisions cannot result in real or significant NOx emission reductions from gas pipeline

compressor engines due to low ozone season utilization. (8)

Response:

The goal of the Subpart 227-2 revisions is to reduce NOx emissions to achieve the additional 7 ton per day reduction in NOx emissions required by EPA. The Department has calculated that the TGP emission reductions will equate to 0.96 tons per day (from the 47 engines). These NOx emission reductions alone will not achieve the 7 ton per day goal. However, in conjunction with all of the sources affected by these revisions New York can achieve the desired reductions. There are 294 sources that will be required to meet the new more stringent limits. The Department will not realize all of the reductions from a few specific sources, but from an entire group of sources. No one source, facility, or owner has to shoulder the entire 7 ton per day burden. As determined by the Clean Air Act and EPA, RACT is year round requirement throughout New York State for major stationary sources.

42. Comment:

The draft RIS fails to include additional analysis on alternative measures and justification for the proposed RACT revision. (8)

Response:

The Department has revised the RIS to address this issue. The revised RIS is included with the final SAPA documents.

The Department would also like to clarify a point raised in TGP's comments. There are no minimum federal requirements for RACT that the Department has to meet. EPA has simply required the State to meet a shortfall in the NOx emission reductions included in the Department's ozone attainment demonstration for the New York City

metropolitan area. The Department is required to reduce NOx emissions to address the shortfall. EPA has not given the Department direction on how to accomplish the NOx emission reductions and has not required the Department to reduce emissions from specific types of equipment or use specific controls to achieve the reductions.

The Department has reviewed a copy of EPA's August 2000 report pertaining to NOx controls for engines ('NOx Emissions Control Costs for Stationary Reciprocating Internal Combustion Engines in the NOx SIP Call States' (E.H. Pechan & Associates, Inc./August 11, 2000)). The report provides that regulatory agencies have the flexibility to determine what types of equipment and NOx controls they may choose to require. The report gives several examples of how a state can apply controls to achieve NOx reductions for the 2007 attainment demonstration. Finally, the report states that there is not a sufficient basis for identifying SCR technology as a viable "add-on" NOx control. This finding that SCR technology is not a cost effective control is relevant for the purposes of determining what constitutes RACT for these sources. Based on the information used the cost analysis in the RIS, the Department respectfully disagrees with the EPA's determination. As the report provides, States have the flexibility to determine RACT.

43. Comment:

Any new emission limits should only apply during the ozone season and be incorporated under 6 NYCRR Part 204. (8)

Response:

The Department believes that the controls being required are RACT and as such should not be confined only to the ozone season. EPA requires, as discussed in the response to comment 6, RACT to be year-round control. Also, the Department believes that the control equipment that would be installed to meet these emission limits

cannot simply be shut off. For the most part, these control systems become a part of the engine and its operating process. Based on the August 2000 Pechan report and actual stack test data, the controls for the lean burn natural gas fired engines will achieve the proposed revised presumptive RACT emission limits. Furthermore, post-process controls like an SCR are installed as part of the engines exhaust system. If a "bypass" is built which allows the engine to operate without the SCR, the Department would need to require more stringent monitoring to assure that the facility is in compliance during the ozone season. Currently, compliance with the emissions limitations of Subpart 227-2 are determined by a compliance stack test. However, if the control equipment could be "bypassed" a more stringent continuous monitoring system would need to be installed to assure that the control equipment was being used and functioning properly.

As to idea of the use of allowances created as part of the NOx Budget Trading Program under 6 NYCRR Part 204, see the response to comment 6.

44. Comment:

The proposed revisions to the RACT rule for natural gas-fired internal combustion engines are not required by the EPA for the New York City metropolitan area ozone attainment demonstration SIP or the NOx SIP Call Budget, exceed EPA requirements, and are more stringent than the OTC NOx Model Rule. (8)

Response:

TGP is correct in stating that the Department is pursuing the revisions to these regulations in order to fulfill a commitment to meet the emission reductions required by EPA in conditionally approving the one-hour ozone attainment demonstration for the New York City metropolitan area. The Department is proposing to limit NOx emissions based on what the control technology can achieve and not the specific emission reduction requirement

cited by EPA in its conditional approval. This approach is warranted since it is more efficient to require a level of control that is achievable by the sources rather than setting an emission reduction requirement based on a SIP emission reduction goal. The Department is revising Subpart 227-2 to redefine NOx RACT for stationary internal combustion engines and to require sources to reevaluate alternate RACT determinations under 227-2.5(c). The Department has evaluated the other source categories covered under the regulation and determined that the emission limits in the regulation still constituted RACT for those sources.

The Department is pursuing the emissions reductions that will result from these regulations for a number of reasons beyond one-hour ozone attainment in the New York City metropolitan area. First, the Department wishes to maintain consistency in its programs throughout the State. As such, the Department has adopted five regulations or revisions to regulations to meet the commitment for one-hour ozone attainment in the New York City metro area statewide (6 NYCRR Part 235, Consumer Products, 6 NYCRR Part 239, Portable Fuel Container Spill Control, 6 NYCRR Part 226, Solvent Metal Cleaning Processes, 6 NYCRR Part 228, Surface Coating Processes, and 6 NYCRR Part 205, Architectural and Industrial Maintenance Coatings). This regulation is the final measure needed to meet that commitment.

Second, RACT requirements are required statewide by federal law. Sections 172(c)(1), 182(b)(2), 182(f) and 184(b)(1)(B) of the federal Clean Air Act taken together require NOx RACT to be implemented statewide in New York State. Therefore, if the Department determines a control level to be RACT, it must implement that level of control statewide.

Third, the new eight-hour ozone NAAQS is more stringent and current monitored values indicate that eight-hour ozone non-attainment could be pervasive in New York State. Additional ozone controls will be required

throughout the State. Pursuant to Environmental Conservation Law (ECL), the Department is obligated to use its authority to provide all of the citizens of the State the cleanest air possible. Under ECL Section 3-0301, the Department has the authority to provide for the prevention and abatement of air pollution. ECL Section 19-0103 declares that it is the policy of New York State to maintain the purity of air resources and to require the use of all available practical and reasonable methods to prevent and control air pollution in the State and ECL Section 19-0105 declares that it is the purpose of Article 19 of the ECL to safeguard the air resources of New York State under a program which is consistent with the policy expressed in ECL Section 19-0103 and in accordance with other provisions of Article 19. ECL Section 19-0301 declares that the Department has the power to promulgate regulations for preventing, controlling or prohibiting air pollution.

Therefore, as long as there is a need to address air pollution problems throughout the State, the Department is within its authority to adopt more stringent rules than required by the federal government and to make these regulations applicable statewide. The Department believes that impending eight-hour non-attainment designations for areas outside the New York City metropolitan area show such a need and the application of NOx RACT and the other ozone control measures statewide is an efficient, practical and reasonable approach to achieve attainment of the eight-hour ozone NAAQS.

The Department agrees with TGP that the State has met its obligations under the NOx SIP call. However, these regulatory revisions are not being made to satisfy any NOx SIP Call obligation, but rather, as stated previously, to address one-hour ozone non-attainment in the New York City metro area and eight-hour ozone non-attainment statewide.

The Department used the OTC NOx Model Rule as a guide in developing the proposed revisions to Subpart

227-2. The Department is not required to use any model rule in creating regulations which address the EPA cited NOx emission reduction shortfall. The Department is allowed to use any and all "guidance" materials to develop acceptable regulations. Therefore, the Department may choose to use all, part, or none of the OTC Model Rule. In this case, a portion of the OTC NOx Model Rule was used to guide the revisions to Subpart 227-2.

45. Comment:

The compliance date of April 1, 2005 is impractical and impossible to achieve based on TGP's past RACT experience. (8)

Response:

See response to comment 5.

46. Comment:

The proposed RACT revisions do not consider potential impacts regarding energy reliability and natural gas market prices. (8)

Response:

Part of any rulemaking analysis (as required by SAPA) is to show the economic impacts of the proposed regulation on the affected industry or the private and municipal communities that they serve. The Department conducts its analysis on the economics of a control strategy on an entire source category, such as spark-ignited natural gas internal combustion engines. Generally, if a control method or emission rate is proven to be technologically or economic infeasible, it is rejected and left out of the regulation. The Department choose presumptive RACT limits based on available control technologies within the RACT cost parameters.

The continued operation of a source and the possible impact that decreased operation would have on reliability is part of the technological feasibility for a specific source. Once the rule is promulgated, the source owner is required to conduct a RACT analysis, which utilizes a "top-down" approach, for technical and economic considerations. If it is proven that a control method or option is not technically of economically feasible, the option is not RACT for that specific source.

47. Comment:

The proposed revisions to 6 NYCRR Part 227-2 exceed federal requirements and the DEC must provide justification for exceeding federal requirements. (8)

Response:

The proposed revisions to Subpart 227-2 do not exceed federal requirements. NOx RACT is a federal requirement throughout New York State. See responses to comments 4 and 6 above.

48. Comment:

The DEC has Failed to Properly Address the Alternatives Measures Analysis Required by ECL Section 19-0303(4). (8)

Response:

The Department respectfully disagrees with this comment. ECL 19-0303(4) states the following:

" In adopting any code, rule or regulation which contains a requirement that is more stringent than the Act or regulations issued pursuant to the Act by the United States environmental protection agency, the commissioner

shall, in addition to the provisions of section two hundred two-a of the state administrative procedure act, include in the regulatory impact statement: (a) a detailed explanation of the reason or reasons that justify exceeding federal minimum requirements, including: (i) satisfying any requirement of the Act as it relates to New York state, including any requirement for demonstrating attainment or maintenance of ambient air quality standards or meeting reasonable further progress pursuant to Title I of the Act; (ii) preventing an assessment or imposition of sanctions, or the imposition of a federal implementation plan, pursuant to the Act; (iii) complying with a final decree of a court; or (iv) protecting public health or the environment; (b) an evaluation of the cost-effectiveness of the proposed code, rule or regulation, in comparison with the cost-effectiveness of reasonably available alternatives; and (c) a review of the reasonably available alternative measures considered by the commissioner and an explanation of the reasons for rejecting such alternatives. Any code, rule or regulation to which this subdivision is applicable shall be subject to the approval of the environmental board pursuant to subdivision 2 of section 5-0107 of this chapter."

The Department has adequately fulfilled all of these requirements in the RIS. A list of possible alternative measures was included. This analysis assessed possible reductions from cement kilns, very large boilers, large boilers, and mid-size boilers, as well as a "no-action" alternative. Each of these alternatives was shown not to adequately address the NOx reduction shortfall and was rejected. In addition, the Department analyzed a number of control technologies to determine the presumptive RACT emissions limitations. This analysis is detailed in the Costs section of the RIS.

49. Comment:

The DEC has failed to follow SAPA Article 2 rulemaking procedures that require consideration of alternative approaches to NOx control. (8)

Response:

See response to comment 47.

50. Comment:

The proposed changes state 'The provisions of this Subpart apply to owners or operators of the following types of major stationary sources of NOx ..."If we "cap out" of our obligation to apply for a Title V permit by agreeing to federally enforceable permit conditions limiting a facility to under 100 tons of NOx, will we be required to adhere to the proposed emissions limits as specified in 6 NYCRR 227 -2.4(f)? (9)

Response:

No. Subpart 227-2 is only applicable to major stationary sources of NOx. Accepting a federally enforceable cap from Title V will effectively cap a facility from major source status and from the requirements of Subpart 227-2.

51. Comment:

The proposed emissions limits as specified in 6 NYCRR Part 227-2.4 (f) state lean burn internal combustion engines with compression ignition will be required to emit no more than 9.0 grams per brake horsepower-hour from promulgation of the proposed changes through March 31, 2005 and then 2.3 grams per brake horsepower-hour beginning April 1 , 2005. We currently have a number of generators under permit with the Department that will not meet this emission limit. As an example, Hanson operates a CAT 3512 Generator Set with a diesel engine that produces 1616 bhp. The CAT emissions data (not to exceed data) indicates this engine currently produces 10.63 grams/bhp-hr of NOx. To meet the required emission limit of 2.3 grams/bhp-hr of NOx we would be required to reduce the emissions by more than a factor of 4. Will the Department require engines currently in use that do not meet the emission limit proposed be replaced at a cost to the company of hundreds of thousands of dollars? (9)

Response:

No. If a facility is subject to Subpart 227-2, it has several compliance options to meet the requirements. A RACT analysis must be conducted to determine what the appropriate level of control for each should be. If the analysis shows that the presumptive RACT emissions limitation is either economically or technically infeasible for a source, the next lowest cost option is evaluated. A control strategy could ultimately be chosen that exceeds the presumptive RACT limit (based on the analysis). The source would then be permitted with an alternative RACT limit.

52. Comment:

To determine compliance with the proposed regulation, will owners of currently in use internal combustion installations be required to conduct stack testing as stipulated in Part 227-2.6? Will this have to be done immediately upon promulgation of the proposed changes in order to show compliance with the emissions limits proposed? (9)

Response:

A stack test for compliance will need to be conducted to prove compliance with the RACT limit. The source is required to submit a compliance plan and an application by July 1, 2004. The final compliance date is April 1, 2005. The source must submit a stack test protocol to the Department for approval. Once RACT is implemented, the stack test must be conducted and the results submitted to the Department for approval.

53. Comment:

Please clarify, with an example, the statement under 227-2.4(f)(3) "All internal combustion engines throughout New York State may utilize an alternative emission rate which achieves a 90 percent or greater NOx reduction from their 1990 actual emissions baseline." (9)

Response:

Every major source in New York State in 1990 was required to certify their emissions, pursuant to the federal Clean Air Act. This 1990 emissions baseline has been used to calculate reductions in emissions from sources throughout New York for several different pollutants. The facility was allowed to use either actual emissions data (lie stack test data) or accept an emission factor (like AP-42 factors) to establish their baseline. This provision allows a source to show that their emissions are at least 90 percent lower than their 1990 baseline emissions. If this is proven, no further RACT analysis needs to be conducted.

54. Comment:

Due to the extreme decrease in NOx emissions as proposed, it seems likely that we would request the Department to set a higher source specific emission limit as a viable option under Section 227-2.5(c) during the permit modification procedure. The Department should realize that our combustion installations (diesel engines) are portable to enable movement with portable processing equipment. The locations that the equipment is used are generally in very rural areas with no availability of other fuel sources. Will the process of obtaining source specific higher emission limits be a drawn out ordeal taking months of review by the Department and then the EPA? (9)

Response:

The RACT compliance plan should include not only the RACT analysis but any technical discussions that show why a source may not be able to implement RACT. The review of an alternative RACT limit is conducted and permitted by the Department. This process starts with the submission of the compliance plan. If the compliance plan is incomplete or found to lack pertinent information, the review will take longer. Once a permit is issued with alternative RACT limits, it is the Department's responsibility to submit the required information to EPA for its review. This review is separate from the RACT permit process. Also, it is the Department's responsibility to show

EPA that the alternative RACT analysis was sufficient.

55. Comment:

If the proposed changes to Part 227 are implemented as written, these regulations will impose significant economic hardship to Hanson Aggregates New York State operations that use stationary internal combustion engines. Furthermore, I am concerned that the Department will not be able to handle the review of hundreds of applications when it appears the Department has difficulty handling the applications it currently is reviewing. (9)

Response:

Technology, which is calculated to be greater than the "cost of RACT" ($3,750 per ton of NOx removed), does not have to be used to achieve RACT. Control technologies may also be disregarded as available if there is a technical reason that they will not work. If it is proven that the technology cannot be safely or physically installed, a determination can be made that the technology is infeasible. Also, the Department is required to review each application and issue a permit which incorporates any new RACT requirements. The Department will issue these permits to meet the federal NOx reduction requirements.

List of Commenters

1. North Shore Towers
2. American Ref- Fuel
3. Dominion Transmission Inc.
4. United States Environmental Protection Agency Region II
5. Environmental Defense
6. Engine Manufacturers Association

7. Village of Rockville Centre

8. Tennessee Gas Pipeline Co.

9. Hanson Aggregates